IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH: NAGPUR

CRIMINAL APPLICATION NO. 2127/2006

Applicant : Ismail Khan s/o. Ibrahim Khan,
aged about 30 years, Occ. Business,
R/o. Tandan Ward, Bhandara.

versus

Non-applicnt : State of Maharashtra,
through P.S.O. Kuhi,
District : Bhandara.

CORAM: S. R. DONGAONKAR, J.
DATE: 23.11.2006

ORDER

Heard Mr. V.D.Muley, learned counsel for the applicant and Mr. Kakdey, learned APP, for state.

Admit.

Heard finally with the consent of the parties.

2] This is an application under Section 482 of Cr.P.C. The facts leading to this application can be stated thus--

The applicant/accused has been charge sheeted for the offence punishable under Sections 279, 338 & 427 of Indian Penal Code of Police Station Kuhi, vide Crime No. 133/2004.

3] It is the prosecution case that on 10.10.1998 Mohd. Isaq was sitting on the pillion seat of Yamaha motorcycle which was driven by Mohd. Sajid Khan. It was given dash by one Maruti van bearing NO. MH-31-C-8338 driven by the applicant accused.

4] The report was lodged on 24.9.2004 by Mohd. Isaq i.e. injured of the accident and the charge sheet came to be filed in the Court of J.M.F.C. Kuhi bearing Criminal Case NO. 219/05.

5] The accused/applicant then moved an application under Section 468 of Cr.P.C. claiming that the prosecution is hopelessly barred by limitation prescribed in Section 468 of Cr.P.C. and therefore, cognizance of the offence after the lapse of period of limitation i.e. maximum period of 3 years should not have been taken.

6] The say of the prosecution was taken in the said application. The prosecution has contended that the complainant came to know about the name of the accused/ applicant i.e. driver of offending vehicle much later and therefore, the report was lodged some time on 24.9.2004.

7] Learned Magistrate after hearing the parties came to the conclusion that the dash was by unknown vehicle and on the day of incident, vehicle number of the van and the name of its driver were not known. The learned Magistrate has found that after tracing out the vehicle number and driver's name, the report came to be lodged on 24.09.2004 and therefore, in view of the provisions of Section 469 (1)(c) of Cr.P.C. period of limitation as prescribed under Section 468 of Cr.P.C. is not attracted, in any case, it cannot be said that the charge sheet is time barred and therefore, he rejected the application of the applicant by his order dated 28.4.2006. This order is challenged in this application.

8] Learned counsel for the applicant has taken me through F.I.R. lodged by the complainant. He contends that on the day of accident, the complainant was knowing the number of vehicle. As mentioned in FIR, the complainant thought that his companion on the motorcycle might have lodged the report at that time and therefore, he did not lodge report. According to the learned counsel for the applicant, the observation of the learned Trial Judge that there is no knowledge of the vehicle number at the time of accident to the complainant is totally incorrect. It is also contended that the name of the driver of offending vehicle was known to the complainant at the time of accident or immediately thereafter

and as the offences alleged against the applicant are punishable by only two years; the bar for taking cognizance under Section 468(1)(c) would be applicable and therefore, the learned trial Judge was not correct in rejecting the application and therefore, it would be a clear case of abuse of process of law and as such this application should be allowed.

9] Learned APP has contended that the complainant has received the knowledge of the number of the vehicle and the name of the driver much later of the accident and just some time prior to the report dated 24.9.2004. He has relied on the statement of the complainant in support of his contention. As such, according to him, the order of the lower Court is correct.

10] It is pertinent to note that the “Meyo Suchana” i.e. intimation about the accident given on 10.10.1998 by the hospital shows that the patient was injured because on Kuhi turn one unknown Maroti van had dashed the Yamaha motorcycle and therefore, he had suffered injuries. There is nothing on record to show that the complainant or his companion on motorcycle had knowledge of the vehicle number and the name of the driver of the offending vehicle at the relevant time.

11] No doubt in the F.I.R., it is stated that Maroti Van No.

MH-34 C-8338 had dashed his motorcycle. But the possibility of the fact that mention of this number, after having the knowledge of the same during the passage of time just prior to the report cannot be ruled out. The knowledge of the vehicle number and the name of the offending driver and time thereof are the questions of facts to be decided at the time of trial. In my opinion, therefore, the charge sheet cannot be rejected on the ground of limitation i.e. upholding the objection of the accused that bar under Section 468(1)(c) of Cr.P.C. is attracted. Therefore, leaving all the points of contentions open for the applicant/accused for raising at the time of trial, this application will have to be rejected.

Application is rejected.

JUDGE

Rvjalit